



Town Council Agenda Report

SUBJECT: Quasi Judicial Hearing: Variance

CONTACT PERSON/NUMBER

Name: Mark Kutney, AICP
Phone: (954) 797-1101

TITLE OF AGENDA ITEM:

V 4-1-00 Michael Poggi, petitioner/owner - Address: 11365 Earnest Boulevard/Generally located on the south side of SW 20th Street, approximately 350 feet west of Hiatus Road.

REPORT IN BRIEF:

In order to satisfy the requirements of a Florida Game and Fresh Water Fish Commission license for keeping of a wild animal, known as a Wallaby, the petitioner is seeking a variance to construct an 8-foot high fence where Town Code permits only a 6-foot high fence.

Staff acknowledges that the proposed "Wallaby" is not a threat to the safety or well being of the surrounding area, and that the proper license was obtained. However, when applying the strict application of the code, staff does not find any special circumstances which apply to this land or building which do not generally apply to others within the same zoning district. Staff finds that this request can be considered to be self-created, and if denied, the applicant would still have reasonable use of the land.

Upon discussion by the Planning and Zoning Board at its May 24, 2000 meeting, the petitioner offered a declaration of restrictions which restricts placement of a Class I animal on the property at any time, and limits the number of Class II and Class III animals which may be placed on the property at any one time. The proposed deed restriction is attached as part of this report.

PREVIOUS ACTIONS: None.

CONCURRENCES:

The Planning and Zoning Board recommended approval subject to the voluntary declaration of restrictions offered by the applicant (motion carried 5-0, May 24, 2000).

FISCAL IMPACT: Not Applicable.

RECOMMENDATION(S): Motion to deny.

Attachment(s): Planning Report, Plot Plan, Deed Restrictions, Land Use Map, Subject Site Map, and Aerial.

Application #: V 4-1-00

Revisions:

Exhibit "A":

Original Report Date: 5/3/00

**TOWN OF DAVIE
Development Services Department
Planning & Zoning Division Staff
Report and Recommendation**

APPLICANT INFORMATION

Owner:

Agent:

Name: Michael Poggi

Name: Michael Poggi

Address: 11365 Earnest Boulevard

Address: 11365 Earnest Boulevard

City: Davie, FL 33325

City: Davie, FL 33325

Phone: (954) 963-2488

Phone: (954) 963-2488

BACKGROUND INFORMATION

Application Request: To construct an 8 foot high fence which exceeds the maximum 6-foot height permitted by code (a difference of 2-feet)

Address/Location: 11365 Earnest Boulevard/Generally located on the south side of SW 20th Street, approximately 350 feet west of Hiatus Road.

Future Land Plan Use Designation: Residential (1 du/ac)

Zoning: R-1, Estate Dwelling District

Existing Use: Single-family residential home

Proposed Use: Single-family residential home

Parcel Size: .89 acres (39,124 square feet)

Surrounding Uses:

Surrounding Land Use:

North: Single-family home

Residential (1 du/ac)

South: Single-family home

Residential (1 du/ac)

East: Single-family home

Residential (1 du/ac)

West: Single-family home

Residential (1 du/ac)

Surrounding Zoning:

North: R-1, Estate Dwelling District, across SW 20 Street

South: R-1, Estate Dwelling District, across Earnest Boulevard

East: R-1, Estate Dwelling District
West: R-1, Estate Dwelling District

ZONING HISTORY

Related Zoning History: None.

Previous Request on same property: None.

DEVELOPMENT PLAN DETAILS

The subject site includes an existing 3,700 (approximate) square foot single-family home with no accessory structures or fencing. The petitioner has recently purchased this property and intends to harbor a “Wallaby” at this location. A Wallaby is a marsupial in the kangaroo family. Information obtained from an Article in the Australian Wild Life Magazine, Author Jean Broleman, identified that this animal is bred in the United States, is kept as a domesticated animal, grows to approximately 3 feet in height and weighs approximately 30 to 50 pounds. Wallabies are herbivores, eating grass, hay, leaves, bark and twigs, plus fruits and vegetables.

Town Code Section 4-22 and 4-23, allows harboring of wild animals if not considered to be a threat to the surrounding area, and a Florida Fresh Water Fish and Game license is issued by the State. Staff research finds that this animal does not constitute a threat to the safety, health or well being of the general public. Therefore, the animal may be permitted upon obtaining a license from the State.

The State requires that the animal be enclosed within an 8-foot high chain-link fence. Town Code permits a maximum allowable fence height of 6-feet within the R-1 District. Thus, the petitioner is requesting a variance to exceed the maximum 6-foot height by an additional 2-feet.

Applicable Codes and Ordinances

Land Development Code Section 12-33(N)(1), Accessory Uses and Structures.

Land Development Code Section 12-309, Review for Variances.

Comprehensive Plan Considerations

Planning Area: The subject property falls within Planning Area 2. This planning area includes the western section of the Town north of Orange Drive and south of SW 14th Street. The predominant existing and planned land use is single-family residential at a density of one dwelling per acre. This planning area contains numerous small subdivisions of one dwelling lots. Several larger parcels are currently being platted, in preparation for marketing or development as estate residences. It is expected that this trend shall continue as the existing inventory of single-family lots is depleted.

This property falls within flexibility Zone 100. This request is not affected by Broward County concurrency or flexibility requirements.

Staff Analysis

In order to satisfy the requirements of a Florida Game and Fresh Water Fish Commission license for keeping of a wild animal, known as a Wallaby, the petitioner is seeking a variance to construct an 8-foot high fence where Town Code permits only a 6-foot high fence.

Staff acknowledges that the proposed "Wallaby" is not a threat to the safety or well being of the surrounding area, and that the proper license was obtained. However, when applying the strict application of the code, staff does not find any special circumstances which apply to this land or building which do not generally apply to others within the same zoning district, and that this request can be considered to be self-created, and if denied the applicant would still have reasonable use of the land.

Findings of Fact

Variances:

Section 12-309(B)(1):

(a) There are no special circumstances and conditions applying to the land and building for which the variance is sought; the circumstances or conditions are not peculiar to such land or building and do apply generally to land or buildings in the same district. Said circumstances or conditions are not such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of the land or building for which the variance is sought. The alleged hardship can be considered to be self-created.

(b) The granting of the variance is not necessary for the reasonable use of the land or building and that the variance as requested is the minimum variance that will accomplish this purpose;

(c) Granting of the requested variance is not in harmony with the general purpose and intent of this chapter, although can be considered not to be injurious to the neighborhood or otherwise detrimental to the public welfare.

Staff Recommendation

Recommendation: Based upon the above and the finding of facts in the negative, staff recommends **denial** of petition V 4-1-00.

Planning and Zoning Board Recommendation

The Planning and Zoning Board recommended approval subject to the voluntary declaration of restrictions offered by the applicant (motion carried 5-0, May 24, 2000).

1. Plot Plan
2. Land Use Map
3. Subject Site Map
4. Aerial

Prepared by: _____

Reviewed by: _____

DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS that the undersigned **Michael Poggi**, whose mailing address is **11365 Earnest Boulevard**, being the owner of that certain real property located in the Town of Davie, Broward County, Florida, and described on Exhibit "A" attached hereto and made a part hereof, voluntarily makes the following Declaration of Restrictions covering the above-described property, specifying that this Declaration of Restrictions shall constitute a covenant running with the land and that this declaration shall constitute a covenant running with the land and that this declaration shall be binding upon the undersigned and upon all persons deriving or taking title through the undersigned. These restrictions, during their lifetime, shall be for the benefit for the Town of Davie, Florida.

1. In conformance with variance petition V 4-1-00, a chain-link fence, not to exceed 8-feet in height, shall be constructed along the side and rear property lines not to extend past the front facade of the principal structure.
2. No animals listed as "Class I", as identified by the Florida Game and Fresh Water Commission, Rule 39-6 Florida Administrative Code, shall be permitted on the property described in Exhibit "A". Class I animals are defined as wildlife which are dangerous species and (i.e. lions, tigers, chimpanzees) that may not be kept as personal pets and may only be possessed for exhibition or other bona-fide uses under Chapter 372.921, Rule 39-6, Florida Administrative Code.
3. This property is limited to no more than four animals listed as "Class II and Class III", with the exception of birds, as identified by the Florida Game and Fresh Water Commission, Rule 39-6 Florida Administrative Code. Class II wildlife is defined as wildlife which are potentially dangerous (i.e. cougars, wolves, macaques) and may only be possessed for exhibition or sale and by experienced private individuals who can qualify by the State to possess them for personal use under Chapter 372.921, Rule 39-6, Florida Administrative Code. Class III wildlife is defined as all wildlife not listed as Class I or Class II.
4. Rule 39-6.002, Florida Administrative Code, listing of Class I, Class II and Class III animals is described in Exhibit "B", attached hereto and made a part hereof.
5. These covenants are to run with the land and shall be binding upon all parties and persons deriving or taking title through the undersigned from the date these covenants are recorded in the Public Records of Broward County, Florida. This Declaration of Restrictions may be amended or removed only by the Town of Davie, Florida, by a written document of equal formality and dignity and with the approval of the undersigned or their successors in title or assigns. Any amendment to this Declaration of Restrictions or termination hereof shall be recorded in the Public

1994

EXHIBIT "A"

BOUNDARY SURVEY

Property Address:

11365 EARNST BOULEVARD, DAVIE, FLORIDA 33325

LEGAL DESCRIPTION:

Lot 4, of "TREE HAVEN ESTATES" according to the plat thereof as recorded in Plat Book 145 at Page 3 of the Public Records of Broward County, Florida.

SURVEYOR'S NOTES:

- 1) The above captioned Property was surveyed and described based on the above Legal Description: Provided by Client.
- 2) This Certification is only for the lands as described. It is not a certification of Title, Zoning, Easements, or Freedom of Encumbrances. **ABSTRACT NOT REVIEWED.**
- 3) There may be additional Restrictions not shown on this survey that may be found in the Public Records of this County. Examination of **ABSTRACT OF TITLE** will have to be made to determine recorded instruments, if any affecting this property.
- 4) **Accuracy:**
The expected use of the land, as classified in the Minimum Technical Standards (61G17-6FAC), is "Residential High Risk". The minimum relative distance accuracy for this type of boundary survey is 1 foot in 10,000 feet. The accuracy obtained by measurement and calculation of a closed geometric figure was found to exceed this requirement.
- 5) Foundations and/or footings that may cross beyond the boundary lines of the parcel herein described are not shown hereon.
- 6) Not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper. Additions or deletions to survey maps or reports by other than the signing party or parties are prohibited without written consent of the signing party or parties.
- 7) Contact the appropriate authority prior to any design work on the herein-described parcel for Building and Zoning information.
- 8) Underground utilities are not depicted hereon, contact the appropriate authority prior to any design work or construction on the property herein described. Surveyor shall be notified as to any deviation from utilities shown hereon.
- 9) Area of the Property: N/A
- 10) Ownership subjects to **OPINION OF TITLE.**
- 11) Type of Survey: **BOUNDARY SURVEY**
- 12) North arrow direction and bearings are based on Recorded Plat Book 145 at Page 3 of the Public Records of Broward County, Florida
- 13) Elevations are based on the National Geodetic Vertical Datum of 1929.
- 14) Bench Mark Used: # N/A of Broward County, FL. * Elev. = 9.86'
- 15) Flood Zone: AH Base Flood Elev.: 7.00' as per Broward County, Florida. FEMA Panel Number: 120035-0195-F-AUGUST 18, 1992
- 16) This **PLAN OF SURVEY** has been prepared for the exclusive use of the entities named hereon. The Certificate does not extend to any unnamed party:


- A.) MICHAEL L. POGGI
B.) COMMONWEALTH LAND TITLE INSURANCE COMPANY
C.) TERRAMAR GUARANTY TITLE & TRUST, INC.
D.)

SURVEYOR'S CERTIFICATE:

I Hereby Certify to the best of my knowledge and belief that this drawing is a true and correct representation of the **BOUNDARY SURVEY** of the real property described hereon.

I further certify that this survey was prepared in accordance with the applicable provisions of Chapter 61G17-6, Florida Administrative Code.

Field Date: March 30, 2000
Field Book: File


Pablo J. Alfonso P.S.M.
Professional Surveyor & Mapper
State of Florida Reg. No. 5880



TOP GUN GROUP, INC. * 291 E. 38th STREET, HIALEAH, FLORIDA 33013
Phone 305-821-2479 * Fax: 305-827-9669 * Beeper: 305-449-2344
E-mail: TopGunL.Srv@AOL.com

SKETCH OF SURVEY

SCALE: 1" = 20'

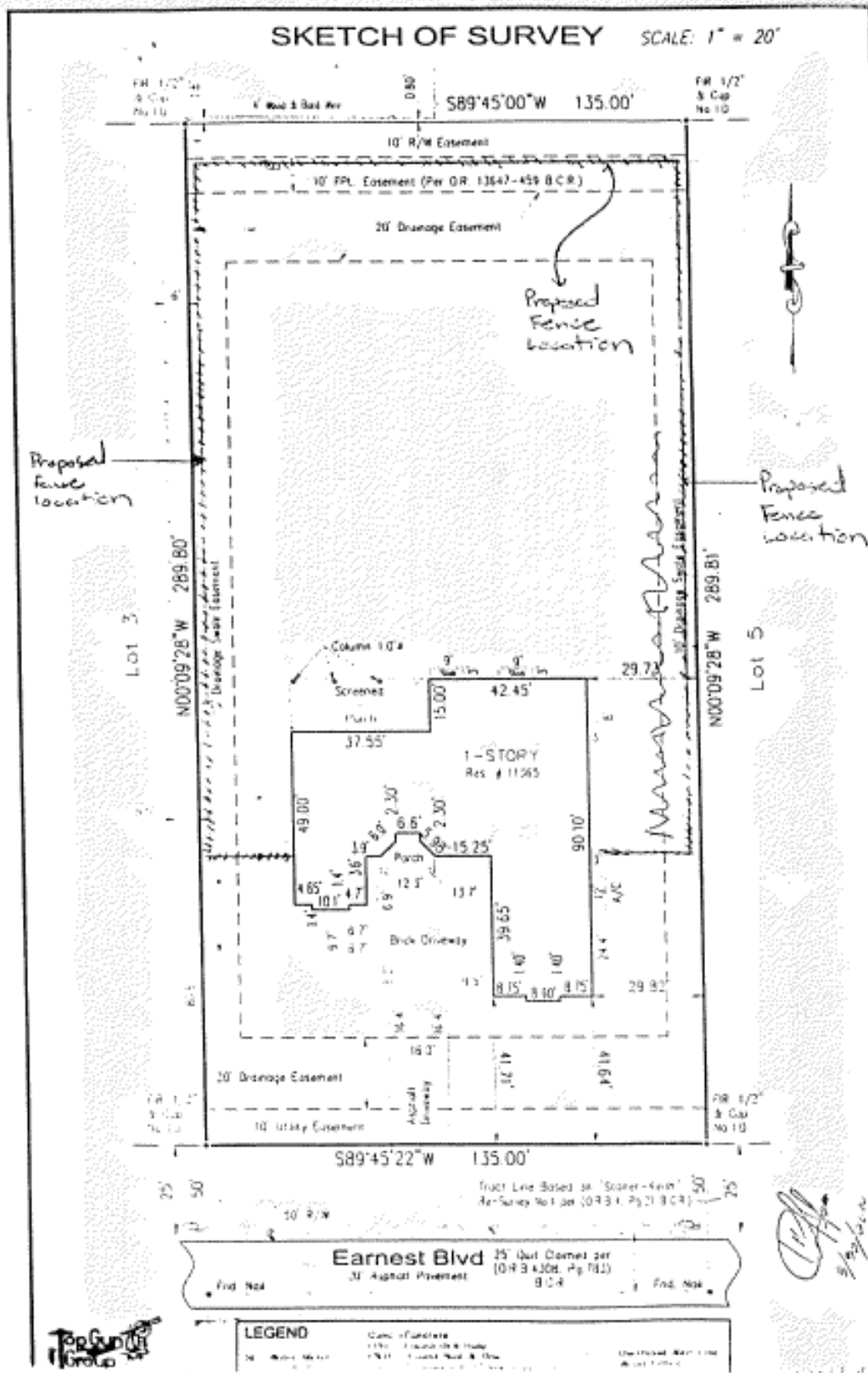


EXHIBIT "B"

1 of 2

39-6.0011 Possession of Wildlife in Captivity; Permit Requirement.

- (1) Except as otherwise provided in this Title, no person shall possess any native or nonnative wildlife in captivity except as authorized by permit issued in accordance with ss. 372.921 or 372.922, F.S., and as provided in this chapter.
- (2) The provisions of this chapter shall not apply to entities operating solely as research facilities, which are registered and regulated as such in accordance with Animal Welfare Act (7 U.S.C. 2131, et. seq.) and regulations promulgated thereunder.
- (3) The provisions of this chapter shall not apply to persons possessing the following non-native wildlife species exclusively for the purpose of production of meat, skins or hides, feathers or progeny thereof, and not for personal possession or public display or exhibition:
 - (a) Ostrich
 - (b) Cassowary
 - (c) Rhea
 - (d) Emu

Specific Authority: Art. IV, Sec. 9, Fla. Const.; 372.021, 372.921, 372.922, F.S. Law Implemented: Art. IV, Sec. 9, Fla. Const.; 372.921, 372.922, F.S. History: New - 6-21-82; Amended - 7-1-84, Previously numbered 39-6.011; Amended - 6-1-86, 5-10-87, 4-13-88, 07-1-90, 4-20-93

39-6.002 Categories of Captive Wildlife.

- (1) The commission hereby establishes the following categories of wildlife:
 - (a) Class I:
 1. Chimpanzees (genus *Pan*)
 2. Gorillas (genus *Gorilla*)
 3. Gibbons (genus *Hylobates*)
 4. Drills and mandrills (genus *Mandrillus*)
 5. Orangutans (genus *Pongo*)
 6. Baboons (genus *Papio*)

7. Siamangs (genus *Symphalangus*)
8. Gelada baboons (genus *Theropithecus*)
9. Snow leopards (*Panthera uncia*)
10. Leopards (*Panthera pardus*)
11. Jaguars (*Panthera onca*)
12. Tigers (*Panthera tigris*)
13. Lions (*Panthera leo*)
14. Bears (family Ursidae)
15. Rhinoceros (family Rhinocerotidae)
16. Elephants (family Elephantidae)
17. Hippopotamuses (family Hippopotamidae)
18. Cape buffalos (*Syncerus caffer caffer*)
19. Crocodiles (except dwarf and Congo) (family Crocodylidae)
20. Gavials (family Gavialidae)
21. Black caimans (*Melanosuchus niger*)
22. Komodo dragons (*Varanus komodoensis*)

(b) Class II:

1. Howler monkeys (genus *Alouatta*)
2. Uakaris (genus *Cacajao*)
3. Mangabeys (genus *Cercocebus*)
4. Guenons (genus *Ceropithecus*)
5. Bearded sakis (genus *Chiropotes*)
6. Guereza monkeys (genus *Colobus*)
7. Celebes black apes (genus *Colobus*)
8. Idris (genus *Indri*)
9. Macaques (genus *Macaca*)
10. Langurs (genus *Presbytis*)
11. Douc langurs (genus *Pygathrix*)
12. Snub-nosed langurs (genus *Phinopithecus*)
13. Proboscis monkeys (genus *Nasalis*)
14. Servals (*Leptailurus serval*)
15. European and Canadian lynx (*Lynx lynx*)
16. Cougars, panthers (*Puma concolor*)
17. Bobcats (*Lynx rufus*)
18. Cheetahs (*Acinonyx jubatus*)
19. Caracals (*Caracal caracal*)
20. African golden cats (*Profelis aurata*)
21. Temminck's golden cats (*Profelis temminckii*)
22. Fishing cats (*Prionailurus viverrina*)
23. Ocelots (*Leopardus pardalis*)
24. Clouded leopards (*Neofelis nebulosa*)
25. Coyotes (*Canis latrans*)
26. Gray wolves (*Canis lupus*) (including wolf x domestic hybrids which are 25 percent or less domestic dog)

27. Red wolves (*Canis niger*) (including wolf x domestic hybrids which are 25 percent or less domestic dog)
28. Asiatic jackals (*Canis aureus*)
29. Black-backed jackals (*Canis mesomelas*)
30. Side-striped jackals (*Canis adustus*)
31. Indian dholes (*Cuon alpinus*)
32. African hunting dogs (*Lycaon pictus*)
33. Wolverines (*Gulo gulo*)
34. Honey badgers (*Mellivora capensis*)
35. American badgers (*Taxides taxus*)
36. Old World badgers (*Meles meles*)
37. Binturongs (*Arctictis binturong*)
38. Hyenas (all species) (family Hyaenidae)
39. Dwarf crocodiles (*Osteolaemus tetraspis*)
40. Alligators, caimans (except American alligator) (family Alligatoridae)
41. Ostrich (*Struthio camelus*)
42. Cassowary (*Casuarius* spp.)

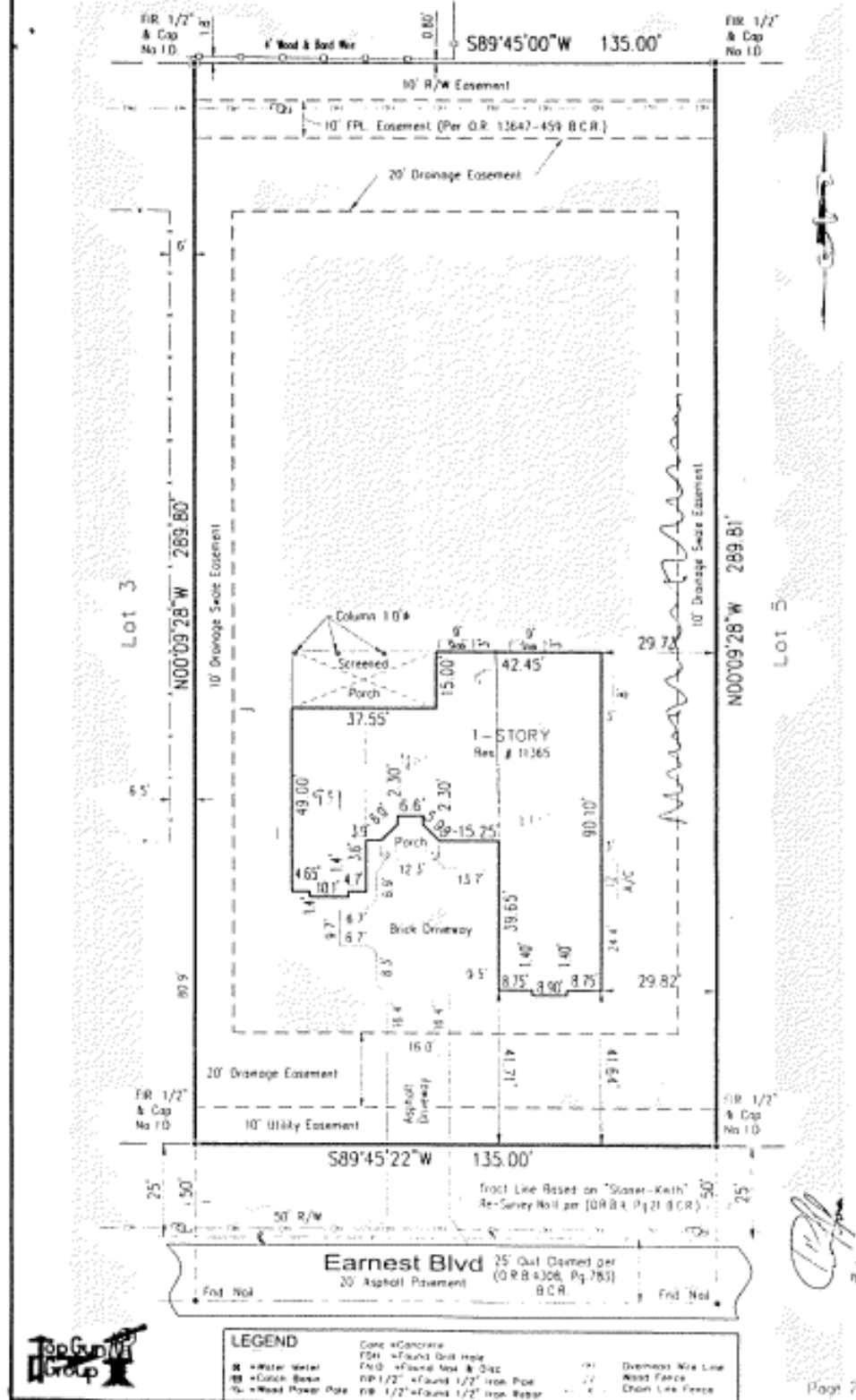
(c) Class III:

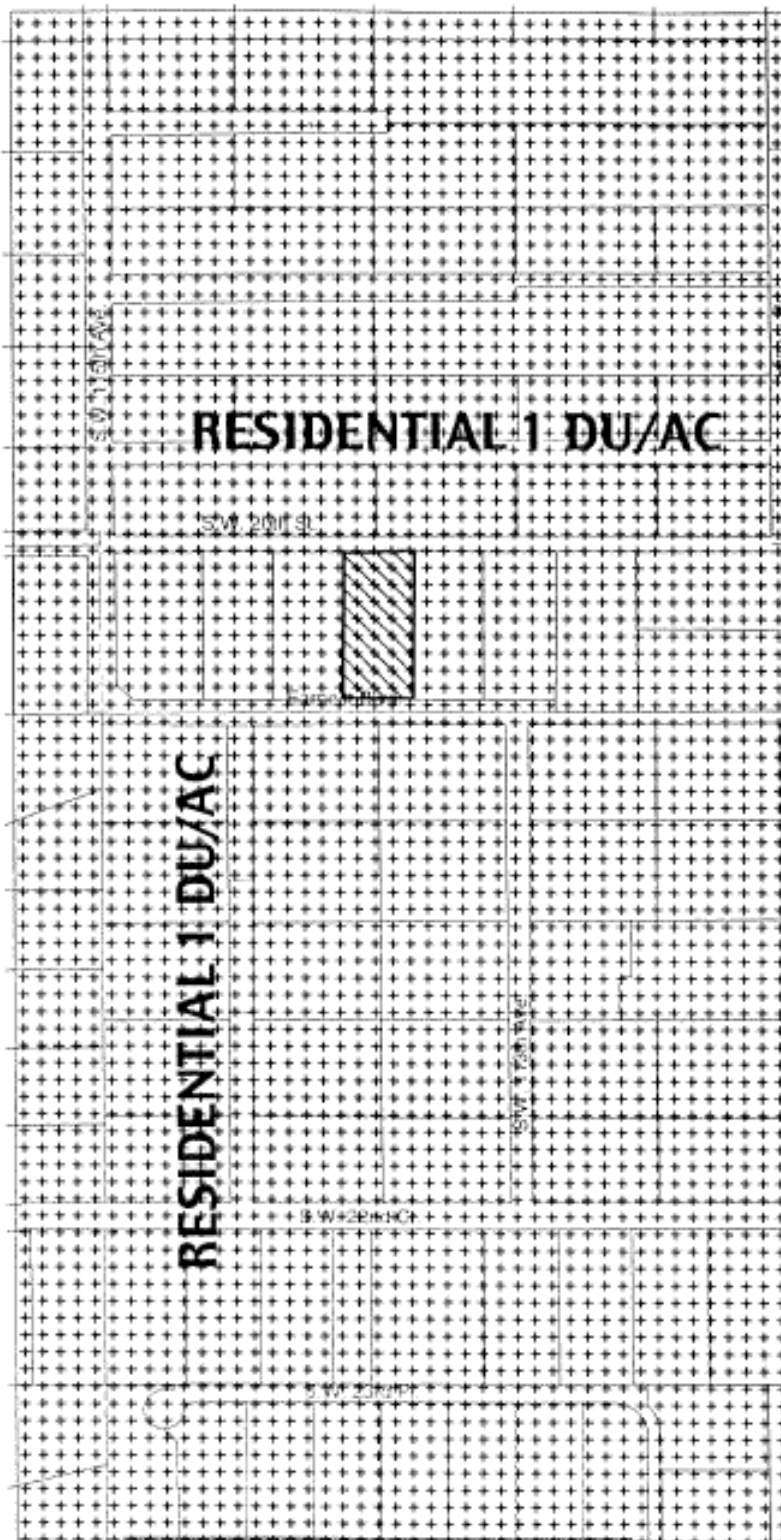
All other wildlife not listed herein, except those for which a permit is not required pursuant to rule 39-6.0022, F.A.C.

- (2) Except as provided in s. 39-6.0021, Class I wildlife shall not be possessed for personal use.
- (3) Persons possessing any captive wildlife for purposes of public display or sale shall obtain a permit as specified in s. 372.921, F.S.
- (4) Persons possessing Class II wildlife as personal use wildlife shall purchase a permit as provided in s. 372.922, F.S.
- (5) Persons possessing Class III wildlife as personal use wildlife shall obtain a no-cost permit from the Executive Director. American alligators shall not be possessed as personal use wildlife and shall be possessed only in accordance with permits issued under rule 39-9.002, F.A.C., ss. 372.6673 or 372.921, Florida Statutes.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. 372.921, 372.922, F.S., History -- New 8-1-79, Amended 12-3-79, 6-4-81, 6-21-82, Formerly 39-6.02, Amended 6-1-86, 7-1-90, 7-1-92, 6-15-96

SKETCH OF SURVEY SCALE: 1" = 20'





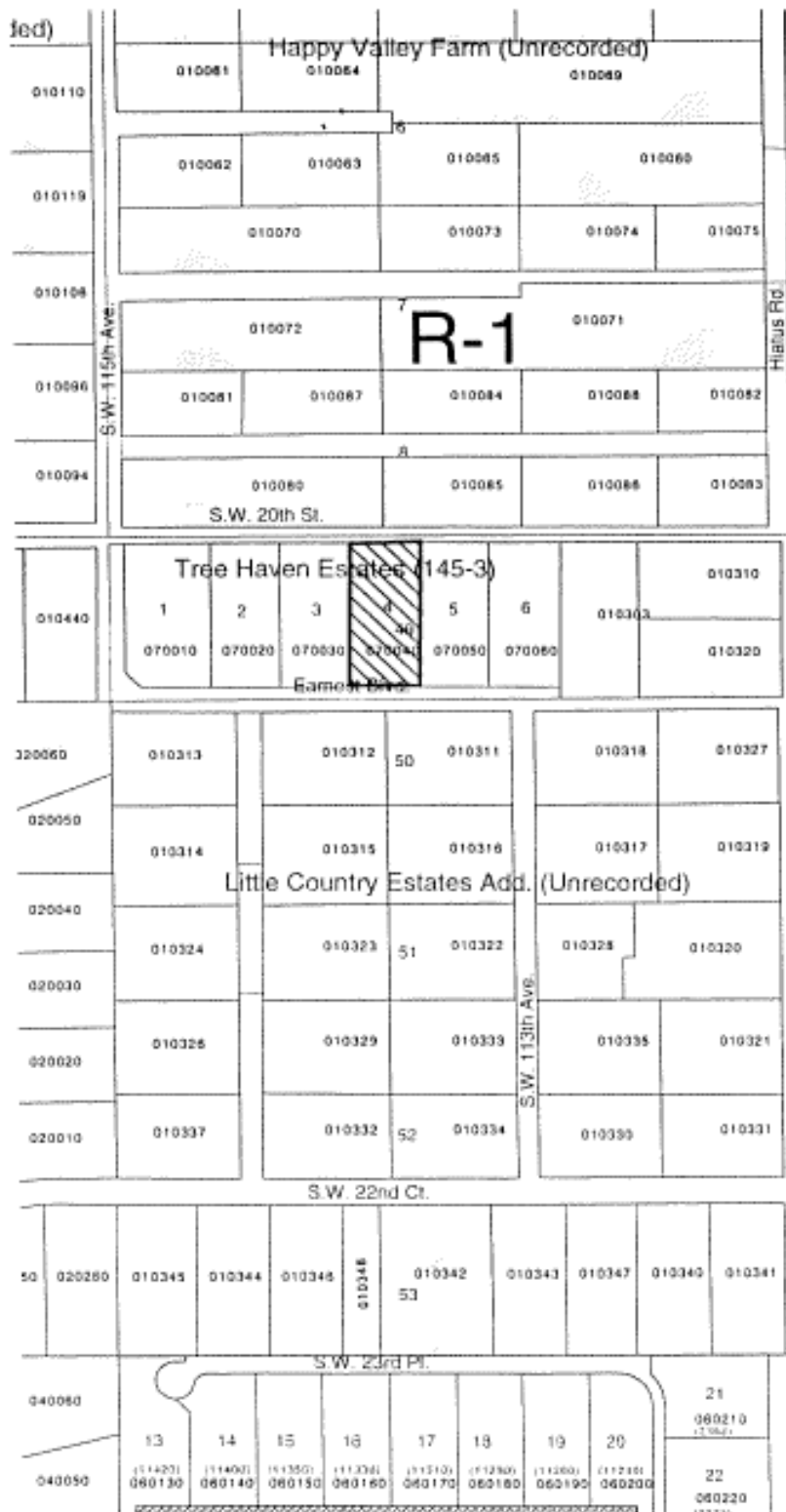
PETITION NUMBER
V 4-1-00

Source: Town of Davis Future Land Use Map

PREPARED 4/25/00
BY THE PLANNING &
ZONING DIVISION

Scale: 1"=400'

N
4



PETITION NUMBER		N
V 4-1-00		
PREPARED 4/26/00		Scale: 1" = 400'
BY THE PLANNING & ZONING DIVISION		

